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No. 93-820

In The

Supreme Court of the United States

October Term, 1993

JOHN FOX,

Petitioner,

v.

NATURAL GAS PIPELINE COMPANY OF AMERICA,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF OF RESPONDENT NATURAL GAS PIPELINE COMPANY OF AMERICA IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

C. MICHAEL CLARK
Houston, Texas
Counsel of Record

JOHNSON & DYLEWSKI
Two Houston Center
Suite 3220
909 Fannin
Houston, Texas 77010
(713) 751-0070

Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Respondent Natural Gas Pipeline Company ("Natural Gas") prays that the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit be denied.

OPINIONS BELOW

Petitioner's Appendices set forth the relevant opinions of the courts below.

JURISDICTION

Jurisdiction exists under 28 U.S.C. 1254.

STATUTES AND RULES INVOLVED

Rule 82 of the Federal Rules of Civil Procedure states, in pertinent part, as follows:

> "These rules shall not be construed to . . . limit the jurisdiction of the United States district courts . . . "

Rule 69 of the Federal Rules of Civil Procedure provides, in pertinent part, that:

> "In aid of the judgment or execution, the judgment creditor may obtain discovery from any person . . . in the manner provided in the state in which the district court is held."

Section 31.002, Paragraph B of the Texas Civil Practice and Remedies Code provides, in pertinent part, that:

"The Court may:

> (1) order the judgment debtor to turn over nonexempt property that is in the debtor's possession or is subject to the debtor's control, together with all documents or records related to the property, to a designated sheriff or constable for execution:

(2) or otherwise apply the property to the satisfaction of the judgment;

STATEMENT OF THE CASE

FACTS

Most of the facts relevant to the case are stated in the opinion of the Fifth Circuit. The relevant facts culminating with the decision of the Fifth Circuit are drawn directly from that opinion.

Until he was fired in 1985, Navarro Crowson was an employee of Mitchell Energy and Development Corp. (Mitchell Energy), Southwestern Gas Pipeline, Inc. (Southwestern Gas), and Winnie Pipeline Co. (Winnie Pipeline). While employed by these companies, Crowson took bribes and kickbacks in connection with the negotiation of oil and gas contracts. Ultimately, Crowson was indicted in federal court in Texas. Crowson's counsel in these criminal proceedings was Petitioner Fox, an attorney and resident of Houston, Mississippi, who had represented and had extensive business dealings with Crowson since at least 1985. Crowson eventually pleaded guilty to several counts of mail fraud.

On September 14, 1988, Respondents Texas Industrial Energy Co. (TICO), and South Gulf Energy, Inc. (South Gulf), sued Crowson in the United States District Court for the Southern District of Texas, Houston Division, to recover damages incurred as a result of the kickback scheme. Crowson filed no answer. On June 21, 1991 the plaintiffs moved for a dafault judgment. On September 17, 1991, Fox entered an appearance in the litigation on

behalf of Crowson to oppose the entry of judgment. On September 23, 1991, default judgment was awarded to TICO and South Gulf for approximately $1.28 million.

In the meantime, Mitchell Energy, Southwestern Gas, and Winnie Pipeline had also brought suit against Crowson in a Texas state court. On the same date that the default judgment was rendered in the federal court, they obtained a default judgment against Crowson that was in excess of $4.75 million. After reaching a judgment collection agreement with TICO and South Gulf, these judgment creditors then intervened in the federal court action.

The judgment creditors attempted to discover the extent and location of Crowson's assets. Interrogatories and requests for production of documents were served upon Fox as Crowson's attorney of record. However, no answers or responsive documents were supplied. On January 15, 1992, the court ordered Crowson to respond to appellees' discovery requests. This order, too, was ignored. On June 8, 1992 the court held a show cause hearing at which Crowson was judged to be in contempt for failing to comply with post judgment discovery. Crowson was then incarcerated.

To gain release from contempt Crowson signed an "Agreed Order". The order was approved by the court on June 15, 1992. Through this order, Crowson pledged to produce all of his financial and business records. The Agreed Order also "authorize(d)" third parties to release such records. The Agreed Order provided that Crowson would be reincarcerated in the event that he failed to comply with its terms or to cooperate fully with post judgment discovery.

Shortly after his release, Crowson removed financial records from his accountant's files in order to assure that the judgment creditors would not obtain them. In response, TICO and South Gulf applied for an *ex parte* order requiring the turnover of Crowson's assets and documents.

On July 14, 1992, the court ordered Crowson, his agents and attorneys, to turn over all of his assets to the United States Marshal's Service. On July 21, 1992, the court held a hearing to determine whether to revoke Crowson's conditional release from contempt for violating the Agreed Order. At the hearing, the court ordered Crowson to produce all of his financial records and to direct his agents to do the same by August 18, 1992. The court did not, however, have Crowson reincarcerated.

Crowson then repaired to Mississippi where he filed for bankruptcy and voluntarily committed himself to a mental hospital. Seeing through this ruse, the court then ordered that Crowson be reincarcerated.

At the same time that Crowson was engaged in this abuse of the discovery process, the judgment creditors were meeting with little more success with Fox. On June 18, 1992, TICO and South Gulf representatives, accompanied by a United States Marshal, had the Agreed Order served upon Fox in his office in Houston, Mississippi. Fox, however, denied being in possession of any of Crowson's requested records and produced nothing. On July 7, 1992, appellees and a marshal returned to Fox's office. Fox again denied being in possession of any documents responsive to the Agreed Order.

Subsequently, appellees discovered that Fox was the trustee of a trust, established in 1990 by Crowson, known as the Crowson Children's 1990 Trust (the Children's Trust). On September 14, 1992, the court ordered Fox to turn over all of the trust's assets, all documents related to the trust, and all assets in his possession belonging to Crowson (the Trust Order). By this time, Fox had already liquidated and disbursed the trust's only asset. Unable to comply with the order due to his own prior actions, Fox responded to this order by filing an adversary proceeding in Crowson's bankruptcy action seeking a declaratory judgment that the Trust Order was null and void. The bankruptcy was subsequently transferred to the court below and dismissed.

On January 21, 1993, the court on its own motion ordered Fox to file a pleading clearly designating his capacity in the instant litigation. On February 5, 1993, Fox responded that he was not a party to the action and that, although he had made a brief appearance on Crowson's behalf in September 1991, he had since been replaced as Crowson's counsel by Bobby Mims, an attorney licensed in Texas. Unconvinced, the district ruled that Fox's response was "inadequate" and that he "remains attorney of record for Navarro Crowson in this action."

On February 8, 1993, appellees filed a motion for sanctions against Fox, who was ordered to appear and show cause why he should not be sanctioned for failing to produce the Crowson records pursuant to the Agreed Order and for failing to turn over the assets of the Children's Trust pursuant to the Trust Order. The show cause hearing was held on March 15, 1993. At the hearing, appellees sought to expose the implausibility of Fox's

earlier assertion that he had no documents responsive to the Agreed Order by informing the court, on the basis of evidence obtained in this case in discovery from other sources, of Fox's extensive business dealings with Crowson. It was revealed, for example, that the two maintained a joint account at a brokerage firm and had actively traded stocks together at Fox-Crowson Investments; that the two shared an interest in a condominium in Crested Butte, Colorado; and that Crowson had assigned to Fox, a natural gas pipeline in Jefferson County, Texas. The court also heard testimony about Fox's activities as Crowson's attorney. Not only had Fox prepared the Children's Trust, but he had been Crowson's lawyer in a divorce settlement within the last few years. The evidence revealed that Fox's roles as attorney and business partner overlapped. For instance, Fox testified that Crowson had assigned him the gas pipeline as compensation for legal services, but that he (Fox) had forgotten about it.

Fox's deep involvement with Crowson as the latter's attorney and business convinced the court below of several things: that an agency relationship existed between Fox and Crowson; that documents relating to their joint ventures must surely exist; that the disclosure of these documents would aid in the location of Crowson's assets; and, finally that Fox had purposefully withheld documents from the court. Accordingly, the court ordered Fox to produce every document in his possession relating to Crowson or business he had done with Crowson. The court also required Fox to produce all of his own personal tax returns and schedules from 1984 to the present. The court further ordered that the motion for sanctions

against Fox be carried over until April 12, 1993, at which time, if Fox had not complied with the court's order, he would be held in contempt.

On April 13, 1993, the show cause hearing resumed. As of that time, Fox still had not produced any of the documents required of him. As he states in his petition, Fox resisted production of the documents on the grounds that he, as a Mississippi resident, could not be compelled to produce records in Texas. Due to his refusal to produce documents, the court ordered that Fox be confined for contempt of Court.

PROCEEDINGS FOLLOWING FOX'S APPEAL

In his ensuing appeal, Fox argued that the district court had no authority to order him to produce records. On September 21, 1993 the Fifth Circuit held that although the District Court could exercise its inherent powers to sanction Fox, it could not compel him to produce his tax returns as a sanction. The Fifth Circuit noted that while Fox's evasiveness, intransigence, and complicity in his client's scandalous behavior would warrant the imposition of sanctions, the sanction of compelled production of his personal tax returns could not be sustained. Therefore, the Court reversed the District Court's order to the extent that it required Fox to produce his tax returns.

As for the records relating to Crowson (as distinguished from Fox's personal tax returns), the Fifth Circuit ruled that both Texas substantive law and the District Court's inherent powers provided an appropriate basis for it to order Fox to produce these documents. Therefore,

the Fifth Circuit affirmed the District Court's order insofar as it related to documents other than Fox's personal tax returns. Fox filed a Motion for Rehearing, which was denied.

Fox then filed, on October 25, 1993, a Motion for Stay of Mandate pending the disposition of this petition for writ of certiorari. Apparently not persuaded that the issuance of a writ of certiorari by this Court was likely, the Fifth Circuit refused to stay its mandate.

Fox did not seek a Stay of Mandate in this Court. He appeared before the District Court for a hearing at which he was supposed to produce the Crowson-related records. Initially, Fox did not comply with the District Court's orders to produce Crowson-related records. However, after a short period of confinement, Fox produced many of the Crowson-related records he had previously stated that he did not have.

According to his own sworn affidavit (Respondents' Appendix "A"), the only Crowson-related records that Fox has not produced at this point are documents reflecting "commission" [kickback] agreements involving Crowson, documents reflecting "commission" payments and other income to Crowson, and documents reflecting charges Fox has made to Crowson for alleged "legal services". Fox has declined to produce these records, citing the Fifth Amendment privilege against self-incrimination. According to Fox, there is possibility that his production of such records could provide ammunition to support charges of racketeering and money laundering against him. (Respondents' Appendix "A").

REASONS FOR DENYING THE WRIT

The Fifth Circuit correctly ruled that Fox was amenable to the orders of the District Court of the Southern District of Texas both under that court's inherent powers and the substantive law of the State of Texas, which the District Court was authorized to follow pursuant to Fed. R. Civ. P. 69. Furthermore, the District Court's reliance upon the doctrine of inherent powers and Texas substantive law does not offend any applicable rule of procedure.

"The power of a court over members of its bar is at least as great as its authority over litigants". *Roadway Express, Inc. v. Piper,* 447 U.S. 752 (1980) *citing Alyeska Pipeline Service Co. v. Wilderness Society,* 421 U.S. 240 (1975). The authority of a court to compel litigants in that court to produce documents and turn over assets in post-judgment proceedings is unquestionable. This being so, it would seem axiomatic that the court has at least co-extensive authority to compel a litigant's attorney to do so, regardless of where the attorney maintains his office and residence.

Indeed, the authority of a district court to compel a non-resident attorney to produce documents to his client's adversary is well settled. In fact, it was regarded as well settled by this Court more than fifty years ago, in a case that bears more than a passing similarity to this one. That case, *Lamb v. Schmitt,* 285 U.S. 222 (1932), involved a situation where judgment creditors brought suit in Mississippi to set aside various transfers of property and funds on the grounds that they constituted fraudulent conveyances. Lamb, an Illinois resident, acted as the judgment debtor's attorney in the action. This suit (the

"underlying suit") resulted in the appointment of a receiver over the judgment debtor's assets. In an ancillary suit, the receiver then sought to recover, for the benefit of the judgment creditors, sums that had been paid to Lamb by the judgment debtor as alleged "attorneys fees" in the defense of the underlying suit. The receiver sought to recover such fees from Lamb through an action instituted in Mississippi, where the underlying suit had been litigated. Lamb contended that he, as an Illinois resident, was not amenable to judicial processes and orders in the state of Mississippi.

In a unanimous decision, the Court flatly rejected Lamb's claim. Justice Stone, writing for the Court, stated as follows:

> "It has never been doubted that witnesses, parties and their *counsel* are amenable to the *process or order* of the court for contempt of court, committed while in attendance upon the trial, or any of them, while there, are subject to the process and orders to the court to compel the production of documents or their testimony in the cause. Nor can it be doubted that the petitioner here, notwithstanding his presence as an attorney and officer of the court in the conduct of the principal cause, was not immune from the service of process in a summary proceeding to compel restoration of the subject-matter of the suit wrongfully removed from the custody of the court . . .
>
> Here the two suits, pending in the same court, are not independent of each other or unrelated. The second was brought in aid of the first, on which the petitioner, when served with process, was in attendance, charged with the duty of

> counsel in the case to assist the court. It was brought to secure rights asserted in the first suit which, but for the acts charged against the petitioner in the second, would have been secured in the first [citation omitted]. The later suit was so much a part and continuation of the earlier one that the jurisdiction of the court over the first extended to the second *without regard to citizenship of the parties or the satisfaction of any other jurisdictional requirements.*

285 U.S. 226-7 (emphasis added).

While Fox's argument is not identical to that urged by the petitioner in *Lamb,* the result he urges is no different. As the Court observed in *Lamb,* denying a court judicial authority over an attorney who practices before it in a particular case and then attempts to thwart the subsequent judgment of the court or prevent its satisfaction would "paralyze the arm of the court and defeat the ends of justice". Id. at 226. In this case, Fox's status as counsel of record and officer of the court provided all the basis required for the court's assertion of jurisdiction over him in matters related to the litigation, without regard to such factors as the place of his citizenship. *Lamb,* supra; see also *International Shoe Co. v. Washington,* 326 U.S. 310 (1945) (one is susceptible to jurisdiction of a court where he has "purposely availed himself of the privilege of acting in the forum state") and *E.F. Hutton Company v. Brown,* 305 F.Supp. 371 (S.D. Tex. 1969) (when attorney represents a litigant in a particular matter, he has subjected himself to personal jurisdiction in that court as to related matters).

Fox argues that the Federal Rules of Procedure somehow limit or negate a court's ability to secure its judgments against the attempts of attorneys to thwart or defeat them, or at least compel the court to rely upon the willingness of courts in the attorney's home state to take appropriate action against him. According to Fox's argument, Rules 34 and 45 dictate such a result.

However, Rule 82 of the Federal Rules specifically provides that the jurisdiction of federal courts is *unaffected* by the Rules of Civil Procedure. Since this Court had recognized before the enactment of the Rules that an attorney is subject to personal jurisdiction in a forum where he has chosen to represent a litigant in a related legal matter; *see Lamb, supra;* the adoption of the Federal Rules could not possibly have changed this principle. Fed. R. Civ. P. 82 ("[t]hese rules shall not be construed to extend or limit the jurisdiction of the United States district courts . . . "; *see also Mississippi Publishing Corporation v. Murphree,* 326 U.S. 438 (1946). As the Fifth Circuit has previously held, the rules of procedure do not restrict the inherent authority of the court over parties who aid and abet a judgment debtor in secreting and dissipating assets to keep them from a judgment creditor. *Waffenschmidt v. Mackay,* 763 F.2d 711 (5th Cir. 1985) *cert. denied* 474 U.S. 1056 (1986).

Further, Rules 34 and 45 of the Federal Rules have nothing to do with the authority of a court to enforce its orders. Rule 34 addresses requests for production of documents. Rule 45 addresses the issuance of subpoenas. As the Fifth Circuit noted, the District Court's direct orders to Fox to turn over documents and assets of his client did not fall within the scope of either rule. The determination

as to whether a court can exert authority over a person who has violated is direct orders is not made by inquiring into whether the court could have enforced a hypothetical request for production of documents or issued a subpoena to the person in question. Rather, the determination is made by reference to principles of *personal jurisdiction. See Waffenschmidt, supra.* As noted above, in matters related to the litigation in which an out-of-state attorney has voluntarily participated, a court has personal jurisdiction over that attorney. Additionally, a court has personal jurisdiction over *any* person, regardless of where he may be found, who has aided and abetted a party's violation of a court order. *Waffenschmidt, supra.*

Finally, due to Fox's decision to become attorney of record for Crowson, he cannot legitimately characterize himself as a "non-resident" when it comes to the issue of the court's authority over him. "A court's power over attorneys is broader than its jurisdiction over non-residents generally, for when attorneys under take to represent parties to pending litigation, they become officers of the court, at least in connection with that litigation". *E.F. Hutton Company v. Brown,* 305 F.Supp. 371 (S.D. Tex. 1969). Unlike a "non-resident" with no minimum contacts to the forum state, an out-of-state attorney representing a litigant in a distant forum has "purposely availed himself of the privilege of acting in the forum state" and has rendered himself subject to the court's authority. Id. at 379, *citing International Shoe.*

In addition to its inherent power over Fox, the District Court was explicitly authorized by the Federal Rules

of Civil Procedure to look to the law of Texas to determine the manner in which discovery could be obtained from "any person". Rule 69 provides that a judgment creditor "may obtain discovery from *any person* . . . in the manner provided by the practice of the state in which the district court is held". Fed. R. Civ. P. 69. The Fifth Circuit determined – as a matter of Texas law and practice – that Texas state courts may issue to and enforce upon third parties orders to turn over property of the judgment debtor. Thus, even if the District Court's direct orders to Fox were misconstrued as "document requests" under Rule 34 or "subpoenas" under Rule 45, the fact that they were issued and enforced by the District Court is nonetheless completely consistent with the rules.

CONCLUSION

Under both Texas practice and its inherent powers, the District Court had ample authority to issue to Fox and enforce against Fox the orders in question. Fox's petition for writ of certiorari should be denied.

Respectfully submitted,

CHARLES MICHAEL CLARK

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NATURAL GAS PIPELINE	§	CIVIL ACTION NO.
COMPANY	§	H-88-3202
OF AMERICA	§	
VS.	§	
	§	
LOUIS A. FRITZ, ET AL.	§	

AFFIDAVIT OF JOHN P. FOX

THE STATE OF TEXAS §

COUNTY OF HARRIS §

I, John P. Fox, declare under penalties of perjury the following:

My name is John P. Fox. I am an attorney, residing in Houston, Mississippi, and a former business partner of Navarro Crowson, the judgment debtor in this case. I am executing this affidavit in order to describe the documents I have produced, and am able to produce, in response to the Court's orders.

Documents Crowson Was Ordered to Produce on June 15, 1992

(a) All financial statements, whether audited or unaudited, prepared by Crowson, Mississippi Energy Company (MEC), or third parties during the past ten (10) years, that relate or pertain to Crowson, MEC, or any business entity, affiliate or corporation with whom Crowson or MEC have been employed, or in which

Crowson or MEC owns or owned a financial interest from January 1, 1985 to the present.

I do not have within my possession or subject to my control, nor is it within my power presently to obtain from any source, other than by subpoena, any audited or unaudited financial statement of Crowson, Mississippi Energy Company, or any business entity, affiliate or corporation with whom Crowson or MEC have been employed, or in which Crowson or MEC owns or owned a financial interest from January 1, 1985 to the present, other than as follows:

I have produced copies of unaudited financial statements for Buttes Condominium Association, relating to a joint venture, CBC Properties No. 1, in which Crowson, I, and others were partners or joint venturers.

(b) All bank or savings and loan records, including but not limited to, all statements of accounts, deposit tickets, cancelled checks, and checkbooks ("bank records") in the name of, or that relate or pertain to, Crowson MEC or any business entity, affiliate or corporation with whom Crowson or MEC have been employed, or in which Crowson or MEC owns or owned a financial interest from January 1, 1985 to the present; for the past ten (10) years.

I have produced all the bank records that I have, or am able to obtain, that relate to this part of the Court's order, as detailed hereafter in this Affidavit.

(c) All documents that reflect, evidence, relate or pertain to any safety deposit boxes ever held by Crowson, MEC, or any business entity, affiliate or corporation with whom Crowson or MEC have been employed, or in which Crowson or MEC owns or owned a financial interest from January 1, 1985 to the present.

I have no documents relating to any safety deposit box held by Crowson, nor do I have any knowledge that he has or has had a safety deposit box.

(d) All documents that reflect, evidence, relate or pertain to Crowson's or MEC'S, or any business entity's, affiliate's or corporation's with whom Crowson or MEC have been employed or in which Crowson or MEC owns or owned a financial interest from January 1, 1985 to the present ownership of real property, wherever it may be located, including but not limited to leases, subleases and options.

I have produced all land documents known to me that are related to Crowson. I have no documents relating to Crowson's ownership of real property, wherever it may be located, including but not limited to leases, subleases and options, other than what I have produced.

(e) All documents that reflect, evidence, relate or pertain to Crowson's or MEC'S, or any business entity's, affiliate's or corporation's with whom Crowson or MEC have been employed, or in which Crowson or MEC owns or owned a financial interest from January 1, 1985 to the present, transfer, sale, assignment or gift of any real property, wherever it may be located, including, but not limited to, leases, subleases, and options, within the past ten (10) years.

I have produced all of such documents that were in my possession or that I was able to obtain.

(f) All documents that reflect, evidence, relate or pertain to Crowson's or MEC'S, or any business entity's, affiliate's or corporation's with whom Crowson or MEC have been employed or in which Crowson or MEC owns

or owned a financial interest from January 1, 1985 to the present, ownership of any personal property.

Other than the documents I have produced, I have no other documents relating to Crowson's personal property.

(g) All Crowson's and MEC's state and/or federal tax returns or any state and/or federal tax returns for any business entity's, affiliate's or corporation's owned in whole or in part by Crowson or MEC from January 1, 1985 to the present.

I have provided all returns of any Crowson business within my possession or control. Specifically, on November 4, 1993 I produced all K-1s and other tax records I had concerning Fox-Crowson Investments, Houston Drilling Company, Realty Southwest Ventures, and CBC.

(h) All federal gift tax filings from January 1, 1985 to the present that reflect, evidence, relate or pertain to Crowson or MEC.

I know of no such documents.

(i) All documents that reflect, evidence, relate or pertain to Crowson's or MEC's participation or ownership in any partnerships, joint ventures, corporations or other business entities in which Crowson or MEC hold either a direct or beneficial interest in from January 1, 1985 to the present.

I have produced the following files related to businesses in which Crowson had an interest.

A. *Fox Crowson Investments:* This is a partnership formed by Crowson and me to buy and sell stock on borrowed money, and to own the Old Coke Building in Houston, Mississippi. I have produced two file folders containing correspondence, partnership tax returns, and

K-1's for the years 1986 to 1991. As far as I know, the K-1's for 1992 have not been prepared.

B. *Holleman-Fox-Crowson:* This is a partnership formed by Jack Holleman, Crowson, and me in the mid-1980's to buy and sell land in Mississippi. The file was maintained by Jack Holleman, the managing partner. My attorneys have informed me that they have obtained from Holleman all his records concerning these real estate transaction and furnished them to Plaintiffs, attorneys.

C. *CBC Properties No. 1:* This is a joint venture, involving the ownership of a condominium in Crested Butte, Colorado. I have produced two file folders containing extensive correspondence, contracts, financial documents, invoices, Schedules K-1, and all other documents in my possession or control relating to this property.

D. *Chickasaw Oil and Gas Co., Inc.:* This is a company that was formed to drill a gas well in 1987. The company had been owned by myself, Crowson, Hubert and Rayburn Parks, and Jack Holleman. I purchased Crowson's interest, and later sold all of my interest on May 31, 1989. My attorneys have informed me that they have provided to Plaintiffs' attorneys my office file and Jack Holleman's office file regarding Chickasaw Oil and Gas Company.

E. *Realty Southwest Venture:* This is a group of investors owning approximately 1 acre of land in Houston, Texas. Crowson assigned his interest to me in August, 1986. I still own it. The file has been furnished.

F. *Rainbow Investments Co:* This is an undivided ownership interest in a gas pipeline system. This was

sold in 1990, and the $25,00.00 [sic] consideration was delivered to Crowson, with the understanding that the proceeds were to be paid to the Bank of Mantee, on the joint Fox-Crowson indebtedness. I have no documents, other than copies of the check, the assignment and correspondence, all of wh h have been furnished.

G. *Houston Drilling Co., Inc.:* This was a company that acquired a drilling rig in order to drill wells on a contract basis. The company lost more than $200,000.00, all of which was borrowed from the Bank of Mantee, Mississippi in the 1980's. Crowson attempted to make a partial, postjudgment payment of approximately $40,00.00 [sic] to the Bank of Mantee. However the District Court ordered the bank to pay this money to Plaintiffs, as judgment creditors, and it has been paid into the court registry for this purpose. The file has been delivered to Plaintiffs' attorneys.

(j) All documents that reflect, evidence, relate or pertain to any transfer of assets of any nature by Crowson or MEC or any business entity or affiliate with whom Crowson or MEC have been employed or in which Crowson or MEC owns or owned a financial interest from January 1985 to the present.

I have produced all such documents. All of the files produced, as described in Subparagraph (i), contain information about transfers of property by or to Crowson.

(k) All documents that reflect, evidence, relate or pertain to any trust or family trust in which Crowson serves or served as a trustee from January 1, 1985 to the present.

I have produced the 1990 Children's Trust file, after it was delivered to me by Crowson's attorney, Bobby Mimms. I know of no other documents responsive to this part of the order.

(l) All documents that reflect, evidence, relate or pertain to any trust or family trust in which Crowson is or was a beneficiary from January 1, 1985 to the present.

I know of no such documents. I have none in my possession, nor do I know of anyone else who does.

(m) All documents that reflect, evidence, relate or pertain to Crowson's or MEC's or any business entity's, affiliate's or corporation's with whom Crowson or MEC have been employed, or in which Crowson or MEC owns or owned a financial interest from January 1, 1985 to the present, ownership of any personal property, including, but not limited to, furniture, artwork, automobiles, livestock, jewelry, insurance, coins stamps, valuable metals, boats or planes.

I know of no documents relating to personal property of Crowson, other than security instruments reflecting loans from the Bank of Mississippi and the Bank of Mantee. They have been provided.

(n) All loan applications and financial statements submitted by Crowson or MEC or any business entity, affiliate or corporation with whom Crowson or MEC have been employed or in which Crowson or MEC owns or owned a financial interest from January 1, 1985 to the present, in conjunction with such applications.

I do not have any such documents.

(o) All documents that reflect, evidence, relate or pertain to any asset held by any party as nominee, nominal holder, or trustee for Crowson or MEC or any business entity, affiliate or corporation with whom Crowson or MEC has been employed, or in which Crowson or MEC owns or owned a financial interest from January 1, 1985 to the present, as the actual or beneficial owner.

I do not have, or have access to, any such documents, other than those I have already produced.

(p) All documents that reflect, evidence, relate or pertain to any asset held by any party as nominee, nominal holder or trustee for Crowson or MEC or any business entity, affiliate or corporation with whom Crowson or MEC have been employed, or in which Crowson or MEC owns or owned a financial interest from January 1, 1985 to the present; that Crowson or MEC has reserved a right of income from within the past ten (10) years.

I know of no such documents.

(q) All documents that reflect, evidence, relate or pertain to Crowson's or MEC's or any business entity's, affiliate's or corporation's with whom Crowson or MEC have been employed, or in which Crowson or MEC owns or owned a financial interest from January 1, 1985 to the present; direct or beneficial ownership in any retirement funds, pension funds, retirement accounts or investments, within the past ten (10) years.

I know of no such documents.

(r) All documents that reflect, evidence, relate or pertain to Crowson's or MEC'S, or any business entity's, affiliate's or corporation's with whom Crowson or MEC have been employed, or in which Crowson or MEC owns or owned a financial interest from January 1, 1985 to the present; direct or beneficial ownership of any insurance policies or annuities within in the past ten (10) years.

I know of no such documents, other than the Children's 1990 Trust, the cash value of which has been paid into the registry of the court.

(s) All documents that reflect, evidence, relate or pertain to Crowson's or MEC'S, or any business entity's, affiliate's or corporation's with whom Crowson or MEC have been employed, or in which Crowson or MEC owns or owned a financial interest from January 1, 1985 to the present, sale or transfer of any asset valued in excess of $5,000.00 since January 1, 1985.

I do not have, or have access to, any such documents, other than those I have already produced.

(t) All documents that reflect, evidence, relate or pertain to Crowson's or MEC's or any business entity's, affiliate's or corporation's with whom Crowson or MEC have been employed, or in which Crowson or MEC owns or owned a financial interest from January 1, 1985 to the present, transfers of assets of any kind, including, but not limited to, monies, jewelry, furs, automobiles, boats, charge cards, furniture, homes, condominiums or apartments since January 1, 1985.

I do not have, or have access to, any such documents, other than those I have already produced.

(u) All trust or estate agreements under which Crowson or MEC is trustee, executor or administrator, or the legal or equitable owner of any beneficial interest therein from January 1, 1985 to the present.

I do not have, or have access to, any such documents, other than those I have already produced.

(v) All contracts of any nature, including commission agreements, under which Crowson or MEC owns a legal or equitable interest in, from January 1, 1985 to the present.

I have copies of documents evidencing "commission" payments. I have been informed by my attorney, Jim Waide, that Plaintiffs, attorney, Perry Zivley, stated to him that the Plaintiffs have evidence that I was involved in a "conspiracy" with Crowson and am guilty of violating federal RICO statutes. Furthermore, this Court has stated to my attorney that the money laundering statutes should be examined, as they may pertain to me. Under these circumstances, my attorney, Michael Maness, has instructed me not to turn over these documents, on the grounds that to do so would violate my own Fifth Amendment rights.

(w) Corporate records of any corporation that Crowson served as officer or director of from January 1, 1985 to the present.

I do not have, or have access to, any such documents, other than those I have already produced.

(x) All documents which reflect, evidence, relate or pertain to any salaries, commissions, bonuses, or other income received by Crowson or MEC or any entity, affiliate or corporation in which Crowson or MEC owns or owned a financial interest in from January 1, 1985 to the present.

I have copies of documents evidencing "commission" payments. I have been informed by my attorney, Jim Waide, that Plaintiffs, attorney, Perry Zivley, stated to him that the Plaintiffs have evidence that I was involved in a "conspiracy" with Crowson and am guilty of violating federal RICO statutes. Furthermore, this Court has stated to my attorney that the money laundering statutes should be examined, as they may pertain to me. Under these circumstances, my attorney, Michael Maness, has

instructed me not to turn over these documents, on the grounds that to do so would violate my own Fifth Amendment rights.

(y) All documents that reflect, evidence, relate to or pertain to brokerage and commodities accounts, whether currently open, active or closed, in the name of Crowson or MEC or any business entity, affiliate or corporation in which Crowson or MEC owns or owned a financial interest from January 1, 1985 to the present, including, but not limited to, account statements or information provided for purposes of state or federal tax filings.

I do not have, or have access to, any such documents, other than those I have already produced. My attorney, Jim Waide, has made a written request to Painewebber [sic] for documents pertaining to the Fox-Crowson Investment account that apparently was opened by Crowson in Texas.

SUMMARY OF DOCUMENTS PRODUCED AND DATES OF PRODUCTION

I obtained records from Crowson's home, after Plaintiffs' attorneys came to Houston, Mississippi in June and July, 1992, seeking records. The following records were produced to Plaintiffs, attorneys in Houston, Texas on November 4, 1993:

A file on James C. Ricker, who was the Trustee of the 1982 Children's Trust;

A file on NBC Energy Consultants, Inc., a Crowson company in which I had no interest;

A file on Fox-Crowson Investments;

A file on Houston Drilling Company; and

A file concerning CBC Properties.

Additionally, on November 4, 1993, I supplied a file on the Children's 1990 Trust, which had been mailed to me by attorney Bobby Mimms, following the taking of the deposition of Jim McFadden in September, 1992.

Finally, on November 4, 1993, I furnished copies of all deeds I had in my office which related to any property in which Navarro Crowson had ever had an interest. I also furnished copies of Forms K-1, which I had previously received, on all businesses in which Crowson and I shared an interest.

On November 5, 1993, following my deposition, Plaintiffs' counsel asserted that my production was incomplete, and I understood that I was required to furnish all of my own bank statements, cancelled checks, deposit slips from my bank accounts, and my wife's bank account. Plaintiffs, counsel agreed to come to Mississippi to examine all of my records. However, during the following week of November 8, 1993, my attorney, Jim Waide, advised me that Plaintiffs' counsel had decided not to come to Mississippi, and that I should send all of my financial records to them in Houston, Texas. Thereafter, I transferred by Federal Express, on approximately November 10, 1993, all of my bank statements, cancelled checks, and deposit slips for the period 1984 through 1992. These included:

1. Account No. 1008-603-5, Bank of Mississippi, Houston, Mississippi, named Fox Crowson Investments, Route 1, Box 202A, Mantee, Mississippi 39751), Federal Emp. I.D. No. 64-0707788.

2. Account No. 0003031754, Bank of Mantee, Mantee, Mississippi, named Fox Crowson Investments, Route

1, Box 202A, Mantee, Mississippi 39751), Federal Emp. I.D. No. 64-0707788.

3. Account No. 10-25028-5, Bank of Mississippi, P.O. Box 112, Houston, Mississippi 38851, named Chickasaw Oil and Gas, Inc. Revenue Account, P.O. Box 652, Houston, Mississippi 38851. These bank records were not previously in my possession, but were air expressed to my counsel in Houston on November 16, 1993.

4. Account No. 10-12264-3, Bank of Mississippi, P.O. Box 112, Houston, Mississippi 38851, named Jack P. Holleman, USA 14-13 Operating Account, P.O. Box 652, Houston, Mississippi 38851.

5. Account No. 1003-890-1, Bank of Mississippi, P.O. Box 112, Houston, Mississippi 38851, named John P. Fox Special Account, P.O. Box 167, Houston, Mississippi 38851.

6. Account No. 1004-185-6, Bank of Mississippi, P.O. Box 112, Houston, Mississippi 38851, named John P. Fox, Attorney, P.O. Box 167, Houston, Mississippi 38851.

7. Account No. 700-285-0, Bank of Mantee, Mantee, Mississippi, named John P. Fox, P.O. Box 167, Houston, Mississippi 38851.

8. Account No. 1000-504-3, Bank of Mississippi, P.O. Box 112, Houston, Mississippi 38851, named John P. Fox or Marion M. Fox, P.O. Box 167, Houston, Mississippi 38851.

However, upon the advice of my counsel, Jim Waide, I decided I should invoke the Fifth Amendment privilege against self-incrimination, rather than furnishing a copy of my bill to Crowson for legal services. Therefore, my attorney FAXed on November 11, 1993, a letter to Plaintiffs' counsel, informing them that the bill would not be

forthcoming, and requesting notification if Plaintiffs believed the document production was incomplete.

There was no response to our request for notification, if documents were claimed to be incomplete, prior to our leaving for Houston, Texas.

After arriving in Houston, Texas, for the scheduled hearing before this Court on Monday, November 15, 1993, my attorney, Jim Waide, went to Mr. Dylewski's office, seeking identification of any documents that were claimed to be missing. Upon returning from this meeting, Mr. Waide informed me that Mr. Dylewski had informed him that the following records had not been provided:

(a) The BOC bank account statements, deposit slips, and cancelled checks;

(b) The Houston Drilling Company file;

(c) The Holleman-Fox-Crowson file.

(d) Records of Live Oak Investment Company;

(e) Records of NBC Energy;

I did not have the checks on the BOC account. This was a money-market account, and the customer does not receive the checks back from the bank. However, I had requested the bank statements, cancelled checks, and deposit slips on the BOC account from Bobby Mooneyham several days earlier. Mooneyham had told me at that time that he had furnished all of the BOC Account records to Plaintiffs' attorneys several months earlier, and that he would produce them for me, but that it would take several weeks.

I called my office from Houston, Texas on the morning of Monday, November 15, 1993, and requested copies of the Houston Drilling Company files. My attorney called Jack Holleman in Houston, Mississippi, and asked him to send forthwith all files relating to Holleman-Fox-Crowson. Holleman is the person who maintains those records, and I did not have any records in my possession relating to that business venture. Thereafter, I received by FAX the Houston Drilling Company file and all of the documents faxed to me by Holleman prior to the hearing on the afternoon on Monday, November 15, 1993. However, the only Holleman-Fox-Crowson documents furnished prior to the hearing on November 15 was the check register for Holleman-Fox-Crowson. My attorney, Jim Waide, has advised that Holleman sent all of his documents relating to Holleman-Fox-Crowson during this week, and they have now been furnished to Plaintiffs' counsel.

I have never had any records on NBC Energy Company, a Crowson company.

I incorporated Live Oak Investment Company, and sent the original certificate of incorporation to Mr. Crowson's Texas attorney, Peggy Summermeyer, in approximately 1984. I have never participated in the operation of Live Oak, except that I drafted a deed from Jack Holleman to Live Oak. A copy of that deed was earlier furnished to Plaintiffs' counsel.

The November 15, 1993 Hearing

At the hearing on the afternoon of November 15, 1993, Mr. Dylewski stated to the Court that the following documents had not been produced:

1. *The BOC documents*: As earlier stated, I did not have these documents in my possession, but had requested them from the bank.

2. *The Painewebber [sic] (Rotan Mosely) account statements*: I have never dealt with the Painewebber [sic] broker regarding this account, which documentation indicates is Account No. OG-06396-14. I had not previously attempted to obtain these statements, because Mr. Dylewski told me that he had subpoenaed these records. However, my attorney, Jim Waide, has advised that on November 17, 1993, he requested these letters by FAX directed to a Painewebber [sic] paralegal.

3. *The Pipeline*: I had already furnished all records in my possession or subject to my control with respect to the sale of my interest in the pipeline, which included a copy of the $25,000.00 check I received, and correspondence relating thereto.

4. *Bank records for John P. Fox Attorney Account from December 28, 1985 until August 21, 1986*: I believed these records already had been furnished, and my attorney, Michael Maness, located many of them during the meeting in Mr. Dylewski's office on November 16, 1993. I have no further banks records in my possession. My wife's affidavit establishing that fact is attached.

5. *Bank records for John P. Fox Special Account from December 12, 1985 until December 15, 1986*: I believed these records already had been furnished, and my attorney, Michael Maness, located many of them during the meeting in Mr. Dylewski's office on November 16, 1993. I have no further banks records in my possession. My wife's affidavit establishing that fact is attached.

6. *Federal income tax returns for 1990 Children's Trust*: I was Trustee of this trust, but never filed any returns for it. I did not and do not believe any tax return was due, and therefore I have not filed any. However, I have signed the appropriate IRS forms, requesting that any such returns be provided directly to Plaintiffs' counsel, Dennis Dylewski.

7. *Records concerning Chickasaw Oil and Gas Co.*: Prior to the hearing on November 15, 1993, my wife Marion and I had searched my law office for many hours, looking for these records, but have not found them. Following the hearing, I called my wife and was informed that my daughter, Elizabeth, had found the records, which had been misfiled among my wife's records. My wife is an architect, who maintains her office in my office. She had several files of her own that have the name "Chickasaw," the name of the county in which Houston, Mississippi, is located, and we share secretarial and clerical employees. My attorneys have advised me that the Chickasaw files have been given to Plaintiffs' counsel.

8. *Crowson's divorce and property settlement agreement*: The final decree and separation agreement between Crowson and his wife provided that Crowson would give her a quitclaim deed to her home, which was her separate property. This document was introduced as an exhibit at the Crowson bankruptcy hearing in Aberdeen, Mississippi, in early 1992, after I had obtained it from the Chancery Clerk of Webster County, Mississippi.

9. *The empty green file folders*: I know nothing about the empty green file folders Mr. Dylewski showed to the Court during the November 15, 1993 hearing. I have no

documents from those folders, if they even exist, nor do I know where they are.

The November 16, 1993 Meeting with Counsel

On the evening of Tuesday, November 16, 1993, following my release from confinement, my attorneys and I went to Mr. Dylewski's office, in order to try again to determine what documents were needed that had not been produced. We participated in a conference with the Plaintiffs' attorneys and Plaintiffs' accountant regarding allegedly missing documents and questions about documents. Plaintiff's accountant furnished handwritten notations and questions listing purported missing items. I respond as follows:

BOC Documents

1. There is no deposit agreement, other than the signature cards.

2. My attorney, Jim Waide, has advised that he has obtained the signature cards and furnished them.

3. There is no check register.

4&5. Deposit slips and deposit items were requested from the Bank of Mississippi approximately two weeks ago, as shown by affidavit of Bobby Mooneyham. They have not yet been received.

6. The Mississippi State Bar does not require any accounting, and none exists.

7. There is no record of disbursements, other than that reflected by checks and monthly bank statements. As

earlier stated, I have requested the checks. I have already furnished the bank statements.

8. There is no written accounting for disbursements.

9. I received all interest.

10. My attorney, Jim Waide, has advised me that he has requested that my wife go to the bank of Mississippi to obtain all 1099s.

11. All income from disbursements was the exclusive property of John P. Fox, except that approximately $9,000.00 of Crowson's money was used by him to buy the Clark property.

12. All proceeds were paid to John P. Fox, except for approximately the $9,000.00 described in paragraph 11.

Realty Southwest

1. (a) There are no documents concerning purchase price, and I paid nothing for his interest.

(b) There are no closing documents.

(c) The only consideration given by me was legal services to Crowson.

(d) I have made no accounting or bookkeeping entries concerning the transactions.

2. (a) I have furnished all correspondence concerning Realty Southwest.

(b) I have no operating reports, otehr [sic] than the K-1 forms.

(c) The K-1s have been provided.

(d) There were no cash disbursements or cash receipts.

(3) I made no accounting entries.

Pipeline

1. (a) There was no negotiation or agreement on price. The agreement between Crowson and me was that the pipeline interest would be sold for whatever could be realized for it.

(b) The proceeds of the sale were given to Crowson, with the understanding that Crowson would use the proceeds to pay the joint debt of myself and Crowson at the Bank of Mantee. I made no accounting entries regarding the property.

(c) The Fifth Circuit's decision has resolved the issue of my income tax returns.

2. (a) I have already furnished all correspondence I have concerning this pipeline.

(b) I have no profit and loss statement, and do not know of anyone who does have such a statement.

(c) There were no cash disbursements from me.

(d) I received no cash.

(e) No K-1's were received.

(f) I do not have any 1120's (copies of corporate income tax returns) for any corporation involving Crowson.

3. (a) I have no correspondence regarding the sale except what has already been furnished.

(b) The sale price was $25,000.00, but the negotiations were between Crowson and the purchaser, and I cannot describe these negotiations, because I was not there.

(c) A check for $25,000 was received from the purchaser, Steven Herbst. I endorsed the check and delivered it to Crowson with the agreement that the proceeds were to be used to reduce the joint indebtedness of Crowson and me at the Bank of Mantee.

(d&e) The Fifth Circuit's decision has resolved the issue of my income tax returns.

CBC Properties No. 1

The deed by which property was transferred to me was in the file delivered to Plaintiffs' attorneys on approximately November 2, 1993. The proceeds were $20,806.25, which were paid to the Bank of Mantee to reduce the indebtedness of Fox and Crowson to the Bank of Mantee. The payment to the Bank of Mantee was made on or shortly after October 1, 1991. The consideration given by me was legal services to Crowson.

I had no written agreement with Crowson.

Fox-Crowson Investments

1. (a) If the partnership agreement were not contained in the file on Fox-Crowson Investments previously

furnished, then I have no knowledge of the whereabouts of the partnership agreement or how to obtain it.

(b) I have previously furnished all records regarding the brokerage accounts to the Plaintiff with the exception of the Painewebber [sic] account. My attorneys have made a written request to Painewebber [sic] for all documents regarding the account.

(c) Live Oak Investment Company acquired a half interest from Jack Holleman. The deed whereby this interest was acquired has already been furnished. Live Oak investment deeded its interest to Crowson, and that deed has been furnished. Other than these two deeds, there are no other records known to Fox concerning Live Oak investments' involvement.

(d) All funding for Fox/Crowson Investments was from loan proceeds from the Bank of Mantee and from the Bank of Mississippi and, on occasion, injection of capital was made by Fox and Crowson in equal shares.

(e) All disbursements were done by Navarro Crowson and were for the purposes of repayment of bank loans or margin calls. Disbursements were by checks written on the Bank of Mississippi and Bank of Mantee.

(f) The Coke Building was originally acquired by John Fox and Jack Holleman. I have requested Holleman's office to perform a title search on the Coke Building and provide all deeds and deeds of trust from the date of Fox and Holleman's purchase until the present date. My attorneys have advised me that deeds obtained pursuant to a title search which I requested have been furnished.

Crowson purchased his interest in the Coke Building from Holleman, in a deed which has already been furnished. The only closing documents were provided on November 2, 1993. The original purchase by me was made 100 percent with money borrowed from the Bank of Mississippi. The deed of trust evidencing this loan would be among the deeds obtained from the title search. I believe the Bank of Mantee's current deed of trust, promissory note, and security agreement on the property has been provided.

Crowson and I borrowed $60,000 from Mrs. Crowson to pay off the Bank of Mississippi. Checks previously furnished document repayments to Mrs. Crowson.

(g) I know of no notes or memos concerning the Coke Building.

"Missing" Bank Statements and Checks

On approximately November 10, 1993, I caused to be transported to the offices of Plaintiffs' attorneys what I believed to be all of my bank statements, cancelled checks, and deposit slips from 1984 through 1992. My attorneys have advised that our 1993 checks and deposit slips were air freighted from Houston, Mississippi and given to Plaintiffs' counsel by my counsel on November 18, 1993.

I have been informed by my attorney, Jim Waide, that on the afternoon of November 17, 1993, Plaintiffs' attorney, Ernie Kersten, informed Mr. Waide that no effort needed to be made to produce bank statements represented to the Court as "missing" during the hearing on

November 15, 1993, until Plaintiffs' accountant had had further opportunity to examine the records to be certain whether they are, in fact, missing. If any items are missing, I will immediately ask my bank to provide copies of them.

I declare under penalty of perjury that the foregoing statements are true.

Signed on November 19, 1993.

JOHN P. FOX